

Senate File 473 - Enrolled

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SENATE FILE 473

AN ACT

ALLOWING A COMPETENT ADULT TO EXECUTE A WRITTEN INSTRUMENT DESIGNATING A PERSON TO HAVE SOLE RESPONSIBILITY AND DISCRETION CONCERNING THE FINAL DISPOSITION OF THAT ADULT'S REMAINS, INCLUDING COORDINATING PROVISIONS, AND PROVIDING APPLICABILITY DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 142.1, Code 2007, is amended to read as follows:

142.1 DELIVERY OF BODIES.

The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter ~~144C~~ or 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during the person's last illness that the person's body should be buried or cremated, nor if such is the desire of the person's relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the Iowa department of public health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. ~~In the event If the deceased person has not expressed a desire during the person's last illness that the person's body should be buried or cremated and should have no relatives that request person authorized to control the deceased person's remains under section 144C.5 requests the person's body for burial or cremation, and if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter.~~

Sec. 2. Section 144.34, Code 2007, is amended to read as follows:

144.34 DISINTERMENT == PERMIT.

Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the ~~surviving spouse or in case of such spouse's absence, death, or incapacity, the next of kin person~~ authorized to control the decedent's remains under section 144C.5. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the ~~surviving spouse or in the spouse's absence, death, or incapacity, the next of kin person~~ authorized to control the decedent's remains under section 144C.5. Due consideration shall be given to the public health, the dead, and the feelings of relatives.

Sec. 3. Section 144.56, Code 2007, is amended to read as follows:

3 4 144.56 AUTOPSY.
3 5 An autopsy or post-mortem examination may be performed upon
3 6 the body of a deceased person by a physician whenever the
3 7 written consent to the examination or autopsy has been
3 8 obtained by any of the following persons, in order of priority
~~3 9 stated when persons in prior classes are not available at the~~
~~3 10 time of death, and in the absence of actual notice of contrary~~
~~3 11 indications by the decedent or actual notice of opposition by~~
~~3 12 a member of the same or prior class:~~
3 13 1. The spouse.
3 14 2. An adult son or daughter.
3 15 3. Either parent.
3 16 4. An adult brother or sister.
3 17 5. A guardian of the person of the decedent at the time of
~~3 18 the decedent's death.~~
3 19 6. Any other person authorized or under obligation to
~~3 20 dispose of the body from the person authorized to control the~~
~~3 21 deceased person's remains under section 144C.5.~~
3 22 This section does not apply to any death investigated under
3 23 the authority of sections 331.802 to 331.804.
3 24 Sec. 4. Section 144B.1, Code 2007, is amended by adding
3 25 the following new subsection:
3 26 NEW SUBSECTION. 1A. "Designee" means a person named in a
3 27 declaration under chapter 144C that is contained in or
3 28 attached to a durable power of attorney for health care.
3 29 Sec. 5. Section 144B.5, Code 2007, is amended by adding
3 30 the following new subsection:
3 31 NEW SUBSECTION. 5. A durable power of attorney for health
3 32 care may include a declaration under chapter 144C that names a
3 33 designee and alternate designees who may be different persons
3 34 than the attorney in fact or alternate attorneys in fact who
3 35 are designated in the durable power of attorney for health
4 1 care.
4 2 Sec. 6. NEW SECTION. 144C.1 SHORT TITLE.
4 3 This chapter may be cited as the "Final Disposition Act".
4 4 Sec. 7. NEW SECTION. 144C.2 DEFINITIONS.
4 5 As used in this chapter, unless the context otherwise
4 6 requires:
4 7 1. "Adult" means a person who is married or who is
4 8 eighteen years of age or older.
4 9 2. "Adult day services program" means adult day services
4 10 program as defined in section 231D.1.
4 11 3. "Assisted living program facility" means assisted
4 12 living program facility as defined in section 231C.2.
4 13 4. "Ceremony" means a formal act or set of formal acts
4 14 established by custom or authority to commemorate a decedent.
4 15 5. "Child" means a son or daughter of a person, whether by
4 16 birth or adoption.
4 17 6. "Decedent" means a deceased adult.
4 18 7. "Declarant" means a competent adult who executes a
4 19 declaration pursuant to this chapter.
4 20 8. "Declaration" means a written instrument, contained in
4 21 or attached to a durable power of attorney for health care
4 22 under chapter 144B, that is executed by a declarant in
4 23 accordance with the requirements of this chapter, and that
4 24 names a designee who shall have the sole responsibility and
4 25 discretion for making decisions concerning the final
4 26 disposition of the declarant's remains and the ceremonies
4 27 planned after the declarant's death.
4 28 9. "Designee" means a competent adult designated under a
4 29 declaration who shall have the sole responsibility and
4 30 discretion for making decisions concerning the final
4 31 disposition of the declarant's remains and the ceremonies
4 32 planned after the declarant's death.
4 33 10. "Elder group home" means elder group home as defined
4 34 in section 231B.1.
4 35 11. "Final disposition" means the burial, interment,
5 1 cremation, removal from the state, or other disposition of
5 2 remains.
5 3 12. "Health care facility" means health care facility as
5 4 defined in section 135C.1.
5 5 13. "Health care provider" means health care provider as
5 6 defined in section 144A.2.
5 7 14. "Hospital" means hospital as defined in section
5 8 135B.1.
5 9 15. "Interested person" means a decedent's spouse, parent,
5 10 grandparent, adult child, adult sibling, adult grandchild, or
5 11 a designee.
5 12 16. "Licensed hospice program" means a licensed hospice
5 13 program as defined in section 135J.1.
5 14 17. "Reasonable under the circumstances" means

5 15 consideration of what is appropriate in relation to the
5 16 declarant's finances, cultural or family customs, and
5 17 religious or spiritual beliefs. "Reasonable under the
5 18 circumstances" may include but is not limited to consideration
5 19 of the declarant's preneed funeral, burial, or cremation plan,
5 20 and known or reasonably ascertainable creditors of the
5 21 declarant.

5 22 18. "Remains" means the body or cremated remains of a
5 23 decedent.

5 24 19. a. "Third party" means a person who is requested to
5 25 dispose of remains by an adult with the right to dispose of a
5 26 decedent's remains under section 144C.5 or assist with
5 27 arrangements for ceremonies planned after the declarant's
5 28 death.

5 29 b. "Third party" includes but is not limited to a funeral
5 30 director, funeral establishment, cremation establishment,
5 31 cemetery, the state medical examiner, or a county medical
5 32 examiner.

5 33 Sec. 8. NEW SECTION. 144C.3 DECLARATION == DESIGNEE.

5 34 1. A declaration shall name a designee who shall have the
5 35 sole responsibility and discretion for making decisions
6 1 concerning the final disposition of the declarant's remains
6 2 and the ceremonies planned after the declarant's death. A
6 3 declaration may name one or more alternate designees and may
6 4 include contact information for the designees and alternate
6 5 designees.

6 6 2. A declaration shall not include directives for final
6 7 disposition of the declarant's remains and shall not include
6 8 arrangements for ceremonies planned after the declarant's
6 9 death.

6 10 3. A designee, an alternate designee, and a third party
6 11 shall act in good faith and in a manner that is reasonable
6 12 under the circumstances.

6 13 4. A funeral director, funeral establishment, cremation
6 14 establishment, cemetery, elder group home, assisted living
6 15 program facility, adult day services program, licensed hospice
6 16 program, or attorney, or any agent, owner, or employee of such
6 17 an entity, shall not serve as a designee unless related to the
6 18 declarant within the third degree of consanguinity.

6 19 5. This section shall not be construed to permit a person
6 20 who is not licensed pursuant to chapter 156 to make funeral
6 21 arrangements.

6 22 Sec. 9. NEW SECTION. 144C.4 RELIANCE == IMMUNITIES.

6 23 1. A designee or third party who relies in good faith on a
6 24 declaration is not subject to civil liability or to criminal
6 25 prosecution or professional disciplinary action, to any
6 26 greater extent than if the designee or third party dealt
6 27 directly with the declarant as a fully competent and living
6 28 person.

6 29 2. A designee or third party who relies in good faith on a
6 30 declaration may presume, in the absence of actual knowledge to
6 31 the contrary, all of the following:

6 32 a. That the declaration was validly executed.

6 33 b. That the declarant was competent at the time the
6 34 declaration was executed.

6 35 3. A third party who relies in good faith on a declaration
7 1 is not subject to civil or criminal liability for the proper
7 2 application of property delivered or surrendered in compliance
7 3 with decisions made by the designee including but not limited
7 4 to trust funds held pursuant to chapter 523A.

7 5 4. A third party who has reasonable cause to question the
7 6 authenticity or validity of a declaration may promptly and
7 7 reasonably seek additional information from the person
7 8 proffering the declaration or from other persons to verify the
7 9 declaration.

7 10 5. The state medical examiner or a county medical examiner
7 11 shall not be subject to civil liability or to criminal
7 12 prosecution or professional disciplinary action for releasing
7 13 a decedent's remains to a person who is not a designee or
7 14 alternate designee.

7 15 6. This section shall not be construed to impair any
7 16 contractual obligations of a designee or third party incurred
7 17 in fulfillment of a declaration.

7 18 Sec. 10. NEW SECTION. 144C.5 FINAL DISPOSITION OF
7 19 REMAINS == RIGHT TO CONTROL.

7 20 1. The right to control final disposition of a decedent's
7 21 remains or to make arrangements for the ceremony after a
7 22 decedent's death vests in and devolves upon the following
7 23 persons who are competent adults at the time of the decedent's
7 24 death, in the following order:

7 25 a. A designee, or alternate designee, acting pursuant to

7 26 the decedent's declaration.
7 27 b. The surviving spouse of the decedent, if not legally
7 28 separated from the decedent, whose whereabouts is reasonably
7 29 ascertainable.
7 30 c. A surviving child of the decedent, or, if there is more
7 31 than one, a majority of the surviving children whose
7 32 whereabouts are reasonably ascertainable.
7 33 d. The surviving parents of the decedent whose whereabouts
7 34 are reasonably ascertainable.
7 35 e. A surviving grandchild of the decedent, or, if there is
8 1 more than one, a majority of the surviving grandchildren whose
8 2 whereabouts are reasonably ascertainable.
8 3 f. A surviving sibling of the decedent, or, if there is
8 4 more than one, a majority of the surviving siblings whose
8 5 whereabouts are reasonably ascertainable.
8 6 g. A surviving grandparent of the decedent, or, if there
8 7 is more than one, a majority of the surviving grandparents
8 8 whose whereabouts are reasonably ascertainable.
8 9 h. A person in the next degree of kinship to the decedent
8 10 in the order named by law to inherit the estate of the
8 11 decedent under the rules of inheritance for intestate
8 12 succession or, if there is more than one, a majority of such
8 13 surviving persons whose whereabouts are reasonably
8 14 ascertainable.
8 15 i. A person who represents that the person knows the
8 16 identity of the decedent and who signs an affidavit warranting
8 17 the identity of the decedent and assuming the right to control
8 18 final disposition of the decedent's remains and the
8 19 responsibility to pay any expense attendant to such final
8 20 disposition. A person who warrants the identity of the
8 21 decedent pursuant to this paragraph is liable for all damages
8 22 that result, directly or indirectly, from that warrant.
8 23 j. The county medical examiner, if responsible for the
8 24 decedent's remains.
8 25 2. A third party may rely upon the directives of a person
8 26 who represents that the person is a member of a class of
8 27 persons described in subsection 1, paragraph "c", "e", "f",
8 28 "g", or "h", and who signs an affidavit stating that all other
8 29 members of the class, whose whereabouts are reasonably
8 30 ascertainable, have been notified of the decedent's death and
8 31 the person has received the assent of a majority of those
8 32 members of that class of persons to control final disposition
8 33 of the decedent's remains and to make arrangements for the
8 34 performance of a ceremony for the decedent.
8 35 3. A third party may await a court order before proceeding
9 1 with final disposition of a decedent's remains or arrangements
9 2 for the performance of a ceremony for a decedent if the third
9 3 party is aware of a dispute among persons who are members of
9 4 the same class of persons described in subsection 1, or of a
9 5 dispute between persons who are authorized under subsection 1
9 6 and the executor named in a decedent's will or a personal
9 7 representative appointed by the court.
9 8 Sec. 11. NEW SECTION. 144C.6 DECLARATION OF DESIGNEE ==
9 9 FORM == REQUIREMENTS.
9 10 1. A declaration executed pursuant to this chapter may,
9 11 but need not, be in the following form:
9 12 I hereby designate as my designee. My
9 13 designee shall have the sole responsibility for making
9 14 decisions concerning the final disposition of my remains and
9 15 the ceremonies to be performed after my death. This
9 16 declaration hereby revokes all prior declarations. This
9 17 designation becomes effective upon my death.
9 18 My designee shall act in a manner that is reasonable under
9 19 the circumstances.
9 20 I may revoke or amend this declaration at any time. I
9 21 agree that a third party (such as a funeral or cremation
9 22 establishment, funeral director, or cemetery) who receives a
9 23 copy of this declaration may act in reliance on it.
9 24 Revocation of this declaration is not effective as to a third
9 25 party until the third party receives notice of the revocation.
9 26 My estate shall indemnify my designee and any third party for
9 27 costs incurred by them or claims arising against them as a
9 28 result of their good faith reliance on this declaration.
9 29 I execute this declaration as my free and voluntary act.
9 30 2. A declaration executed pursuant to this chapter shall
9 31 be in a written form that substantially complies with the form
9 32 in subsection 1, is properly completed, is contained in or
9 33 attached to a durable power of attorney for health care under
9 34 chapter 144B, and is dated and signed by the declarant or
9 35 another person acting on the declarant's behalf at the
10 1 direction of and in the presence of the declarant. In

10 2 addition, a declaration shall be either of the following:
10 3 a. Signed by at least two individuals who are not named
10 4 therein and who, in the presence of each other and the
10 5 declarant, witnessed the signing of the declaration by the
10 6 declarant, or another person acting on the declarant's behalf
10 7 at the direction of and in the presence of the declarant, and
10 8 witnessed the signing of the declaration by each other.

10 9 b. Acknowledged before a notarial officer.

10 10 3. A declaration may include the location of an agreement
10 11 for prearranged funeral services or funeral merchandise as
10 12 defined in and executed under chapter 523A, cemetery lots
10 13 owned by or reserved for the declarant, and special
10 14 instructions regarding organ donation consistent with chapter
10 15 142C.

10 16 Sec. 12. NEW SECTION. 144C.7 REVOCATION OF DECLARATION.

10 17 1. A declaration is revocable by a declarant in a writing
10 18 signed and dated by the declarant.

10 19 2. Unless otherwise expressly provided in a declaration:

10 20 a. A dissolution of marriage, annulment of marriage, or
10 21 legal separation between the declarant and the declarant's
10 22 spouse that occurs subsequent to the execution of the
10 23 declaration constitutes an automatic revocation of the spouse
10 24 as a designee.

10 25 b. A designation of a person as a designee pursuant to a
10 26 declaration is ineffective if the designation is revoked by
10 27 the declarant in writing subsequent to the execution of the
10 28 declaration or if the designee is unable or unwilling to serve
10 29 as the designee.

10 30 Sec. 13. NEW SECTION. 144C.8 FORFEITURE OF DESIGNEE'S
10 31 AUTHORITY.

10 32 A designee shall forfeit all rights and authority under a
10 33 declaration and all rights and authority under the declaration
10 34 shall vest in and devolve upon an alternate designee, or if
10 35 there is none vest in and devolve pursuant to section 144C.5,
11 1 under either of the following circumstances:

11 2 1. The designee is charged with murder in the first or
11 3 second degree or voluntary manslaughter in connection with the
11 4 declarant's death and those charges are known to a third
11 5 party.

11 6 2. The designee does not exercise the designee's authority
11 7 under the declaration within twenty-four hours of receiving
11 8 notification of the death of the declarant or within forty
11 9 hours of the declarant's death, whichever is earlier.

11 10 Sec. 14. NEW SECTION. 144C.9 INTERSTATE EFFECT OF
11 11 DECLARATION.

11 12 Unless otherwise expressly provided in a declaration:

11 13 1. It is presumed that the declarant intended to have a
11 14 declaration executed pursuant to this chapter have the full
11 15 force and effect of law in any state of the United States, the
11 16 District of Columbia, and any other territorial possessions of
11 17 the United States.

11 18 2. A declaration or similar instrument executed in another
11 19 state that complies with the requirements of this chapter may
11 20 be relied upon, in good faith, by the designee, an alternate
11 21 designee, and a third party in this state so long as the
11 22 declaration is not invalid, illegal, or unconstitutional in
11 23 this state.

11 24 Sec. 15. NEW SECTION. 144C.10 EFFECT OF DECLARATION.

11 25 1. The designee designated in a declaration shall have the
11 26 sole discretion pursuant to the declaration to determine what
11 27 final disposition of the declarant's remains and ceremonies to
11 28 be performed after the declarant's death are reasonable under
11 29 the circumstances.

11 30 2. The most recent declaration executed by a declarant
11 31 shall control.

11 32 3. This chapter does not prohibit a person from conducting
11 33 a separate ceremony to commemorate a declarant, at the
11 34 person's expense, to assist in the bereavement process.

11 35 4. The rights of a donee created by an anatomical gift
12 1 pursuant to section 142C.11 are superior to the authority of a
12 2 designee under a declaration executed pursuant to this
12 3 chapter.

12 4 Sec. 16. NEW SECTION. 144C.11 PRACTICE OF MORTUARY
12 5 SCIENCE.

12 6 This chapter shall not be construed to authorize the
12 7 unlicensed practice of mortuary science as provided in chapter
12 8 156.

12 9 Sec. 17. Section 331.802, subsection 3, paragraph h, Code
12 10 2007, is amended to read as follows:

12 11 h. Death of a person if the body is not claimed by a
12 12 ~~relative~~ person authorized to control the deceased person's

12 13 remains under section 144C.5, or a friend.

12 14 Sec. 18. Section 331.802, subsection 8, Code 2007, is
12 15 amended to read as follows:

12 16 8. Where donation of the remains of the deceased to a
12 17 medical school or similar institution equipped with facilities
12 18 to perform autopsies is provided by will or directed by the
12 19 ~~spouse, parents or children of full age, of the deceased~~
12 20 person authorized to control the deceased person's remains
12 21 under section 144C.5, any autopsy under this section shall be
12 22 performed at the direction of the school or institution, and
12 23 in such a manner as to further the purpose of the donation,
12 24 while serving the public interest.

12 25 Sec. 19. Section 331.804, subsection 1, Code 2007, is
12 26 amended to read as follows:

12 27 1. After an investigation has been completed, including an
12 28 autopsy if one is performed, the body shall be prepared for
12 29 transportation. The body shall be transported by a funeral
12 30 director, ~~if chosen by a relative or friend~~ person authorized
12 31 to control the remains of the deceased person under section

12 32 144C.5, for burial or other appropriate disposition. A
12 33 medical examiner shall not use influence in favor of a
12 34 particular funeral director. However, if a person other than
12 35 a funeral director assumes custody of a dead body, the person
13 1 shall secure a burial transit permit pursuant to section
13 2 144.32. If no one claims a body, it shall be disposed of as
13 3 provided in chapter 142.

13 4 Sec. 20. Section 331.805, subsection 3, paragraph b, Code
13 5 2007, is amended to read as follows:

13 6 b. ~~If the next of kin, guardian, or other person~~
13 7 ~~authorized to act on behalf~~ control the remains of a deceased
13 8 person under section 144C.5 has requested that the body of the
13 9 deceased person be cremated, a permit for cremation must be
13 10 obtained from a medical examiner. Cremation permits by the
13 11 medical examiner must be made on the most current forms
13 12 prepared at the direction of and approved by the state medical
13 13 examiner, with copies forwarded to the state medical
13 14 examiner's office. Costs for the cremation permit issued by a
13 15 medical examiner shall not exceed seventy-five dollars. The
13 16 costs shall be borne by the family, next of kin, guardian of
13 17 the decedent, or other person of the permit and other
13 18 reasonable cremation expenses may be paid from the decedent's
13 19 estate pursuant to section 633.425, subsection 3.

13 20 Sec. 21. Section 523I.309, Code 2007, is amended to read
13 21 as follows:

13 22 523I.309 INTERMENT, RELOCATION, OR DISINTERMENT OF
13 23 REMAINS.

13 24 1. ~~Any available member of the following classes of~~
13 25 ~~persons, in the priority listed, A person authorized to~~
13 26 control the deceased person's remains under section 144C.5
13 27 shall have the right to control the interment, relocation, or
13 28 disinterment of a decedent's remains within or from a
13 29 cemetery+.

13 30 a. ~~The surviving spouse of the decedent, if not legally~~
13 31 ~~separated from the decedent.~~

13 32 b. ~~The decedent's surviving adult children. If there is~~
13 33 ~~more than one surviving adult child, any adult child who can~~
13 34 ~~confirm, in writing, that all other adult children have been~~
13 35 ~~notified of the proposed interment, relocation, or~~
14 1 ~~disinterment may authorize the interment, relocation, or~~
14 2 ~~disinterment, unless the cemetery receives an objection to~~
14 3 ~~such action from another adult child of the decedent.~~

14 4 ~~Alternatively, a majority of the surviving adult children of~~
14 5 ~~the decedent whose whereabouts are reasonably ascertainable~~
14 6 ~~shall have such right to control.~~

14 7 c. ~~The surviving parents of the decedent whose whereabouts~~
14 8 ~~are reasonably ascertainable.~~

14 9 d. ~~A surviving adult grandchild of the decedent. If there~~
14 10 ~~is more than one surviving adult grandchild, any adult~~
14 11 ~~grandchild who can confirm, in writing, that all other adult~~
14 12 ~~grandchildren have been notified of the proposed interment,~~
14 13 ~~relocation, or disinterment may authorize the interment,~~
14 14 ~~relocation, or disinterment, unless the cemetery receives an~~
14 15 ~~objection to such action from another adult grandchild of the~~
14 16 ~~decedent. Alternatively, a majority of the surviving adult~~
14 17 ~~grandchildren of the decedent whose whereabouts are reasonably~~
14 18 ~~ascertainable shall have such right to control.~~

14 19 e. ~~A surviving adult sibling of the decedent. If there is~~
14 20 ~~more than one surviving adult sibling, any adult sibling who~~
14 21 ~~can confirm, in writing, that all other adult siblings have~~
14 22 ~~been notified of the proposed interment, relocation, or~~
14 23 ~~disinterment may authorize the interment, relocation, or~~

~~14 24 disinterment, unless the cemetery receives an objection to~~
~~14 25 such action from another adult sibling of the decedent.~~
~~14 26 Alternatively, a majority of the surviving adult siblings of~~
~~14 27 the decedent whose whereabouts are reasonably ascertainable~~
~~14 28 shall have such right to control.~~
14 29 f. A surviving grandparent of the decedent. If there is
~~14 30 more than one surviving grandparent, any grandparent who can~~
~~14 31 confirm, in writing, that all other grandparents have been~~
~~14 32 notified of the proposed interment, relocation, or~~
~~14 33 disinterment may authorize the interment, relocation, or~~
~~14 34 disinterment, unless the cemetery receives an objection to~~
~~14 35 such action from another grandparent of the decedent.~~
~~15 1 Alternatively, a majority of the surviving grandparents of the~~
~~15 2 decedent whose whereabouts are reasonably ascertainable shall~~
~~15 3 have such right to control.~~
15 4 g. An adult person in the next degree of kinship to the
~~15 5 decedent in the order named by law to inherit the estate of~~
~~15 6 the decedent under the rules of inheritance for intestate~~
~~15 7 succession.~~
15 8 h. The county medical examiner, if responsible for the
~~15 9 decedent's remains.~~
15 10 A cemetery may await a court order before proceeding with
~~15 11 the interment, relocation, or disinterment of a decedent's~~
~~15 12 remains within or from a cemetery if the cemetery is aware of~~
~~15 13 a dispute between an authorized person under this section and~~
~~15 14 the executor named in the decedent's will or a personal~~
~~15 15 representative appointed by a court, or is aware of a dispute~~
~~15 16 among authorized persons with the same priority under this~~
~~15 17 subsection.~~
15 18 2. A person who represents that the person knows the
15 19 identity of a decedent and, in order to procure the interment,
15 20 relocation, or disinterment of the decedent's remains, signs
15 21 an order or statement, other than a death certificate, that
15 22 warrants the identity of the decedent is liable for all
15 23 damages that result, directly or indirectly, from that
15 24 representation.
15 25 3. A person may provide written directions for the
~~15 26 interment, relocation, or disinterment of the person's own~~
~~15 27 remains in a prepaid funeral or cemetery contract, or written~~
~~15 28 instrument signed and acknowledged by the person. The~~
~~15 29 directions may govern the inscription to be placed on a grave~~
~~15 30 marker attached to any interment space in which the decedent~~
~~15 31 had the right of interment at the time of death and in which~~
~~15 32 interment space the decedent is subsequently interred. The~~
~~15 33 directions may be modified or revoked only by a subsequent~~
~~15 34 writing signed and acknowledged by the person. A person other~~
~~15 35 than a decedent who is entitled to control the interment,~~
~~16 1 relocation, or disinterment of a decedent's remains under this~~
~~16 2 section shall faithfully carry out the directions of the~~
~~16 3 decedent to the extent that the decedent's estate or the~~
~~16 4 person controlling the interment, relocation, or disinterment~~
~~16 5 is financially able to do so.~~
16 6 4. A cemetery shall not be liable for carrying out the
~~16 7 written directions of a decedent or the directions of any~~
~~16 8 person entitled to control the interment, relocation, or~~
~~16 9 disinterment of the decedent's remains.~~
16 10 5. 3. In the event of a dispute concerning the right to
16 11 control the interment, relocation, or disinterment of a
16 12 decedent's remains, the dispute may be resolved by a court of
16 13 competent jurisdiction. A cemetery or entity maintaining a
~~16 14 columbarium~~ shall not be liable for refusing to accept the
16 15 decedent's remains, relocate or disinter, inter or otherwise
16 16 dispose of the decedent's remains, until the cemetery or
~~16 17 entity maintaining a columbarium~~ receives a court order or
16 18 other suitable confirmation that the dispute has been resolved
16 19 or settled.
16 20 ~~6.~~ 4. a. If good cause exists to relocate or disinter
16 21 remains interred in a cemetery, the remains may be removed
16 22 from the cemetery pursuant to a disinterment permit as
16 23 required under section 144.34, with the written consent of the
16 24 cemetery, the current interment rights owner and the person
16 25 entitled ~~by this section~~ to control the interment, relocation,
16 26 or disinterment of the decedent's remains under section
~~16 27 144C.5.~~
16 28 b. If the consent required ~~by this subsection~~ pursuant to
~~16 29 paragraph "a" is not refused but cannot otherwise be obtained,~~
16 30 the remains may be relocated or disinterred by permission of
16 31 the district court of the county in which the cemetery is
16 32 located upon a finding by the court that clear and convincing
16 33 evidence of good cause exists to relocate or disinter the
~~16 34 remains.~~ Before the date of application to the court for

16 35 permission to relocate or disinter remains under this
17 1 subsection, notice must be given to the cemetery in which the
17 2 remains are interred, each person whose consent is required
17 3 for relocation or disinterment of the remains under subsection
~~17 4 4~~ paragraph "a", and any other person that the court requires
17 5 to be served.

17 6 c. For the purposes of this subsection, personal notice
17 7 must be given not later than the eleventh day before the date
17 8 of hearing on an application to the court for permission to
17 9 relocate or disinter the remains, or notice by certified mail
17 10 or restricted certified mail must be given not later than the
17 11 sixteenth day before the date of application hearing.

17 12 d. This subsection does not apply to the removal of
17 13 remains from one interment space to another interment space in
17 14 the same cemetery to correct an error, or relocation of the
17 15 remains by the cemetery from an interment space for which the
17 16 purchase price is past due and unpaid, to another suitable
17 17 interment space.

17 18 ~~7.~~ 5. A person who removes remains from a cemetery shall
17 19 keep a record of the removal, and provide a copy to the
17 20 cemetery, that includes all of the following:

17 21 a. The date the remains are removed.

17 22 b. The name of the decedent and age at death if those
17 23 facts can be conveniently obtained.

17 24 c. The place to which the remains are removed.

17 25 d. The name of the cemetery and the location of the
17 26 interment space from which the remains are removed.

17 27 ~~8.~~ 6. A cemetery may disinter and relocate remains
17 28 interred in the cemetery for the purpose of correcting an
17 29 error made by the cemetery after obtaining a disinterment
17 30 permit as required by section 144.34. The cemetery shall
17 31 provide written notice describing the error to the
17 32 commissioner and to the person who has the right to control
17 33 the interment, relocation, or disinterment of the remains
17 34 erroneously interred, by restricted certified mail at the
17 35 person's last known address and sixty days prior to the
18 1 disinterment. The notice shall include the location where the
18 2 disinterment will occur and the location of the new interment
18 3 space. A cemetery is not civilly or criminally liable for an
18 4 erroneously made interment that is corrected in compliance
18 5 with this subsection unless the error was the result of gross
18 6 negligence or intentional misconduct.

18 7 ~~9.~~ 7. Relocations and disinterments of human remains
18 8 shall be done in compliance with sections 144.32 and 144.34.
18 9 Relocations of human remains held in a columbarium shall be in
18 10 compliance with the laws regulating the entity maintaining the
18 11 columbarium.

18 12 Sec. 22. APPLICABILITY DATES.

18 13 1. This Act applies to all declarations executed on or
18 14 after the effective date of this Act.

18 15 2. The section of this Act enacting section 144C.5 applies
18 16 to all deaths occurring on or after the effective date of this
18 17 Act, except that section 144C.5, subsection 1, paragraph "a",
18 18 applies only to a designee or alternate designee designated in
18 19 a declaration that is executed on or after the effective date
18 20 of this Act.

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18 24 _____
18 25 JOHN P. KIBBIE
18 26 President of the Senate

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18 29 _____
18 30 PATRICK J. MURPHY
18 31 Speaker of the House

18 32 I hereby certify that this bill originated in the Senate and
18 33 is known as Senate File 473, Eighty-second General Assembly.
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19 2 _____
19 3 MICHAEL E. MARSHALL
19 4 Secretary of the Senate

19 5 Approved _____, 2008
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19 8 _____
19 9 CHESTER J. CULVER
19 Governor